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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,753	02/10/2004	Todd Craig	PI028/00P12-U	8722
24350 7590 02/22/2008 STITES & HARBISON, PLLC 400 W MARKET ST SUITE 1800 LOUISVILLE, KY 40202-3352				
EXAMINER				
HICKS, ROBERT J				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
02/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/775,753

Applicant(s)

CRAIG ET AL.

Examiner

ROBERT J. HICKS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 15-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 2/10/2004
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, Claims 1-14 and 31 in the reply filed on January 11, 2008 is acknowledged. Claims 15-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 11, 2008.

Claim Rejections - 35 USC § 102

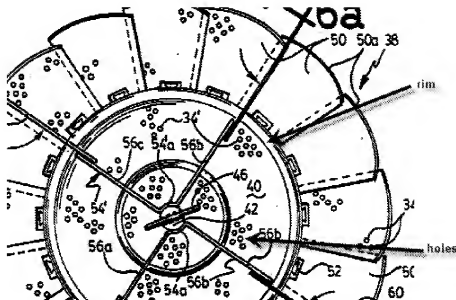
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 10-13 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Deneault et al. (USPN 5,402,714) [hereinafter Deneault].**

4. Regarding Claim 10, the patent to Deneault – a fondue pot partitioning array – discloses a frame (38) for supporting multiple food products (Abstract, Lines 9-11), the frame defining a rim (Fig. 5) for supporting the multiple food products, the rim generally surrounding a plurality of separated bottom openings (34'), one opening for each of the multiple food products, the openings being adapted to allow transmission of thermal energy directly to the multiple food products supported by the rim (Col. 1 Lines 40-42, and Lines 57-59). The thermal energy from the heat source can travel through the holes at the base in order to heat up the food inside the frame.

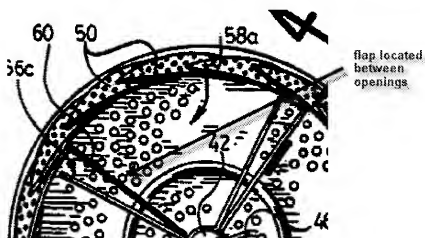


5. Regarding Claim 11, Deneault discloses the frame is adapted for placement within a pan (12', 13') to directly support the multiple food products through the bottom openings (Col. 4 Lines 51-55).
6. Regarding Claim 12, Deneault discloses the frame is adapted to support a plurality of separate food-product pans (58a-d), one pan for each of the multiple food products, over each of the bottom openings (Col. 4 Line 67 to Col. 5 Line 8). The side walls of the frame (**Deneault**, 56a-d) allow for the frame to be separated into separate food-product pans.
7. Regarding Claim 13, Deneault teaches a raised portion (60) disposed between the separated bottom openings (Fig. 3, Col. 5 Lines 27-29), the raised portion being adapted to aid in cutting a portion of the multiple food products. The examiner interprets Figure 3 to show there are flaps (**Deneault**, 60) that are connected to the

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bottom plate (Deneault, 40), in which the flaps are located between the bottom openings (Deneault, 34').

A recitation of the intended use of the claimed invention (e.g. "adapted to aid in cutting a portion of the multiple food products" [Claim 13 Lines 2-3]) must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.



8. Regarding Claim 31, Deneault discloses a frame (38) for supporting multiple food products (Abstract Lines 9-11), the frame defining means for supporting the multiple food products (40), the means for supporting defining a plurality of separated bottom openings (34'), one opening for each of the multiple food products, the openings being adapted to allow transmission of thermal energy directly to the multiple food products supported by the rim (Col. 1 Lines 40-42 and Lines 57-59) – as stated in Paragraph 4 of this office action.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deneault in view of Carollo (USPN 5,622,742).

Deneault discloses an insert (38) adapted to fit within a pan (12', 13', Col. 4 Lines 51-55), the insert comprising: a plurality of sidewalls (50) extending between a base (40) of the insert and an upper portion (50a) of the insert, the sidewalls generally surrounding a plurality of openings (34') defined by the insert in the base.

Deneault does not expressly disclose that the insert is adapted to fit within a pan such that each of multiple pizzas held by the insert is able to contact a bottom of the pan and the sidewalls of the insert; however, the patent to Carollo - a baking pan for pizzas - discloses an insert (**Carollo**, 36A-D) adapted to fit within a pan (**Carollo**, 20, Col. 3 Lines 30-33) for multiple pizzas (**Carollo**, 22) held by the insert is able to contact

a bottom of the pan (**Carollo**, 38) and the sidewalls (**Carollo**, 40) of the insert. The inserts are mounted onto the pan, thus making the insert and the pan the entire apparatus to hold pizzas. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the Deneault frame and pan to have the insert be able to hold pizzas as each pizza contacts a bottom and sidewall of the pan, as suggested by Carollo, since "This enables the heat from the oven floor to be quickly conducted to the cavity sections **36A-D** holding the stuffed pizza...." (**Carollo**, Col. 5 Lines 7-9)

12. Claims 1-2 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carollo in view of Deneault.

13. Regarding Claim 1, the patent to Carollo discloses an apparatus (Fig. 1) for holding multiple pizzas (22), the apparatus comprising: a pan (20); and an insert (36A-D) adapted to fit within the pan (Col. 3 Lines 30-33), the insert comprising a plurality of sidewalls (40) extending between a base (38) of the insert and an upper portion (42) of the insert; wherein the insert is adapted to fit within the pan such that each of the multiple pizzas contacts a bottom of the pan and the sidewalls of the insert (Fig. 4).

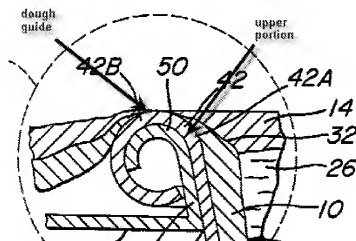
Carollo does not expressly disclose that the sidewalls generally surrounding a plurality of openings defined in the base; however, the patent to Deneault discloses a frame (**Deneault**, 38) with a plurality of openings (**Deneault**, 34') in the base (**Deneault**, 40) – as shown in Paragraph 4 of this office action. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the base of the inserts in the Carollo pizza pan

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to have a plurality of openings at the bottom, as suggested by Deneault, "for free passage of said meat soup between said fondue pot and said cup member and vice-versa." (**Deneault**, Col. 1 Lines 67-68).

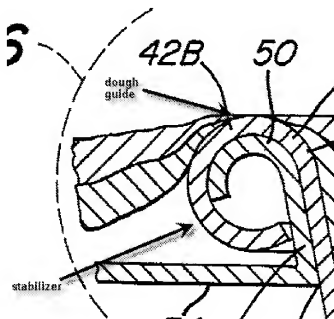
14. Regarding Claim 2, Carollo in view of Deneault discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Carollo discloses the insert defines a center bar (**Carollo**, 42B) disposed above the upper portion of the insert (**Carollo**, 36A-D); further wherein the center bar and the sidewalls are arranged such that a single sheet of dough (**Carollo**, 14) laid across the insert is readily divided along the center bar to form separate crusts for the multiple pizzas (**Carollo**, Fig. 3, Col. 3 Lines 44-51).

15. Regarding Claim 5, Carollo in view of Deneault discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Carollo discloses the insert defines a plurality of dough guides (**Carollo**, 42B) adapted to generally center dough (**Carollo**, 10 and 14) laid across the insert, the dough guides extending above the upper portion (**Carollo**, Fig. 6).



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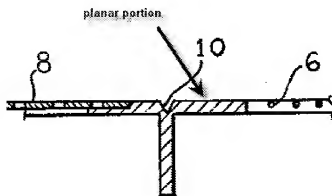
16. Regarding Claims 6-7, Carollo in view of Deneault discloses all the limitations substantially as claimed, as applied to claims 5 and 1 above, respectfully; further, Carollo discloses the insert defines a plurality of stabilizers (**Carollo**, Fig. 6) spaced from the sidewalls (**Carollo**, 40) and extending from the dough guides toward the base, the stabilizers being adapted to stabilize the insert within the pan (**Carollo**, Col. 4 Lines 10-14).



17. Regarding Claim 8, Carollo in view of Deneault discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Carollo discloses the sidewalls are angled with respect to the base (**Carollo**, Fig. 3) in a manner to create the multiple pizzas from a single sheet of dough laid across the insert (**Carollo**, Col. 5 Line 54 to Col. 6 Line 2). Pan pizza is made from a single sheet of dough, as is known to one of ordinary skill in the art.

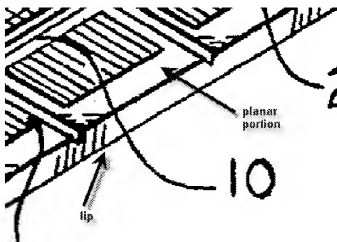
18. Claims 3-4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carollo in view of Deneault as applied to claim 1 above, and further in view of Federico (USPN 3,899,962).

19. Regarding Claim 3, Carollo in view of Deneault discloses all the limitations substantially as claimed, as applied to claim 1 above. The Carollo and Deneault combination does not expressly disclose that the insert defines a generally planar platform extending in the upper portion outwardly from the sidewalls; however, the patent to Federico – a pastry and pizza baking apparatus – discloses a pan (Federico, F) with an insert (Federico, T) that has a planar platform (Federico, Fig. 3) in the upper portion outwardly from sidewalls. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the insert in the Carollo and Deneault combination pizza pan to have a planar portion extending in the upper portion, as suggested by Federico, which “insures uniform heat transfer from the oven floor, or subjacent heating means to the crust, for cooking the pastry precisely uniformly throughout and to the desired extent....” (Federico, Col. 2 Lines 62-65)



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20. Regarding Claim 4, Carollo in view of Deneault in view of Federico discloses all the limitations substantially as claimed, as applied to claim 3 above; further, Federico teaches a lip extending toward the base and disposed along an edge of the platform to structurally strengthen the insert (**Federico**, Fig. 1). A recitation of the intended use of the claimed invention (e.g. "to structurally strengthen the insert" [Claim 4 Line 2]) must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.



21. Regarding Claim 9, Carollo in view of Deneault discloses all the limitations substantially as claimed, as applied to claim 1 above. The Carollo and Deneault combination does not expressly disclose that the insert defines a generally rectangular shape; further wherein the openings are two in number and are of a generally square shape for forming two generally square pizzas. However, the patent to Federico teaches the insert (**Federico**, T) has a generally rectangular shape (**Federico**, Fig. 1) wherein the openings are two in number (**Federico**, Col. 1 Lines 35-42), and are

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generally square shape for forming two generally square pizzas (**Federico**, Abstract Lines 18-19).

Federico discloses that the tray element provides "discontinuous supporting means for individual portions" (**Federico**, Col. 1 Lines 36-37), "either as transverse longitudinal wires **6**, wire cloth or screening **7**, or perforated sheet metal **8**." (**Federico**, Col. 2 Lines 20-21). There appears to be openings in the tray element, and the tray element has two openings. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the insert in the Carollo and Deneault combination pizza pan to have a rectangular insert and two openings in the insert, as suggested by Federico, "to facilitate dividing the pastry into individual serving size pieces ... generally corresponding to cells defined by the grid." (**Federico**, Col. 1 Lines 39-42)

Carollo in view of Deneault in view of Federico discloses the claimed invention, except for the openings are not square in shape. Federico does disclose "the sheet and tray normally being so dimensioned as to accommodate a pastry of sufficient size to enable a number of serving size pieces to be made from it, and usually although not necessarily, rectangular in general outline." (**Federico**, Abstract Lines 18-19). The examiner interprets this statement to mean that one of ordinary skill in the art could make the outline of the pastry pieces square in shape. It would have been an obvious matter of design choice to Describe make the size of the tray openings in the Carollo, Deneault, and Federico combination pizza pan to be square in shape, since applicant has not disclosed that making the tray openings square in shape solves any stated

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problem or is for any particular purpose and it appears that the invention would perform equally well with the openings in the tray insert to be square in shape "to facilitate dividing the pastry into individual serving size pieces ... generally corresponding to cells defined by the grid." (**Federico**, Col. 1 Lines 39-42)

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited for prior art considered relevant to this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. H./
Robert J. Hicks
Examiner, Art Unit 3781
2/15/2008

/Anthony D Stashick/
Anthony Stashick
Supervisory Patent Examiner, Art Unit 3781